

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|----------------------------|---|-----------------------------|
| GREGORY HICKMAN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 2:20-cv-21 |
| |) | |
| DESIRE S. HICKMAN-SURRATT, |) | |
| Defendant. |) | |

OPINION

Introduction

This case was referred to a United States magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D. On February 5, 2020, the magistrate judge filed a Report and Recommendation (“R&R”) recommending that the amended complaint filed by plaintiff Gregory Hickman (“Hickman”) be dismissed for lack of subject-matter jurisdiction (ECF No. 7) (the “second R&R”).

The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2, objections to the second R&R must be filed by February 24, 2020, and that failure to file timely objections would constitute a waiver of appellate rights. Based on a correspondence from Hickman, the magistrate judge extended the deadline for filing objections to the second R&R to March 10, 2020. No timely objections were filed.

Legal Analysis

Even if no objections are filed, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; *see also McClain v. Pennsylvania Department of Corrections*, No. 1:19-CV-1951, 2020 WL 1690081, at *1 (M.D. Pa. Apr. 7, 2020); *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (explaining that judges should review dispositive legal issues raised by the R&R for clear error). Following an independent review of the record, the court is satisfied that the second R&R contains no clear error and will therefore accept the recommendation of the magistrate judge and dismiss the amended complaint for lack of subject-matter jurisdiction. The court will adopt the second R&R as the opinion of the court, as supplemented herein.

On January 20, 2020, the magistrate judge filed a R&R recommending that the original complaint filed by Hickman be dismissed for lack of subject-matter jurisdiction (ECF No. 5) (the “first R&R”). In response to the first R&R, Hickman filed an amended complaint (ECF No. 6). As explained by the magistrate judge in the second R&R, the amended complaint failed to cure the jurisdictional defect identified by the court in the first R&R. It is clear from the face of the amended complaint that Hickman asserts a state law claim (i.e., negligence which caused him to fall off a ladder while painting defendant’s house) and that both plaintiff and defendant are citizens of Pennsylvania. This court, therefore, lacks subject-matter jurisdiction.

Leave to Amend

Hickman was given two opportunities to plead a claim that is cognizable in federal court. It is clear that he is unable to do so. The court concludes that further leave to amend will not be granted because it would be futile and inequitable. The amended complaint will therefore be

dismissed with prejudice and without leave to amend and the case will be marked closed.

Conclusion

For the reasons set forth in the magistrate judge's second R&R, which will be adopted as the opinion of this court as supplemented herein, the amended complaint (ECF No. 6) will be dismissed with prejudice and without leave to amend.

An appropriate Order will be entered.

BY THE COURT:

Dated: April 9, 2020

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|----------------------------|---|-----------------------------|
| GREGORY HICKMAN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 2:20-cv-21 |
| |) | |
| DESIRE S. HICKMAN-SURRATT, |) | |
| Defendant. |) | |

ORDER

And now this 9th day of April, 2020, in accordance with the opinion, it is hereby ORDERED that the magistrate judge's Report and Recommendation (ECF No. 7), to which no objections were filed, is adopted as the opinion of this court as supplemented in the opinion. It is further ORDERED that the amended complaint (ECF No. 6) is dismissed with prejudice and without leave to amend. This case shall be docketed closed.

BY THE COURT:

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Court Judge